



Billing Code: 6750-01-S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (“PRA”), the Federal Trade Commission (“FTC” or “Commission”) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements in the Business Opportunity Rule (“Rule”). That clearance expires on January 31, 2021.

DATES: Comments must be submitted by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write “Business Opportunity Rule Paperwork Comment, FTC File No. P114408” on your comment and file your comment online at <https://www.regulations.gov>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Christine M. Todaro, Attorney,
Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade
Commission, 600 Pennsylvania Avenue, NW, CC-8528, Washington, DC 20580, (202)
326-3711.

SUPPLEMENTARY INFORMATION:

Title of Collection: Disclosure Requirements Concerning Business Opportunities, 16
CFR Part 437.

OMB Control Number: 3084-0142.

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 10,065.

Estimated Annual Labor Costs: \$703,141.

Estimated Annual Non-Labor Costs: \$3,056,503.

Abstract:

The Business Opportunity Rule requires business opportunity sellers to furnish prospective purchasers a disclosure document that provides information regarding the seller, the seller's business, and the nature of the proposed business opportunity, as well as additional information to substantiate any claims about actual or potential sales, income, or profits for a prospective business opportunity purchaser. The seller must also preserve information that forms a reasonable basis for such claims.

The Rule is designed to ensure that prospective purchasers receive information to help them evaluate business opportunities. Sellers must disclose five key items of information in a simple, one-page document: (1) the seller's identifying information; (2)

whether the seller makes a claim about the purchaser's likely earnings (and, if yes, the seller must provide information supporting any such claims); (3) whether the seller, its affiliates, or key personnel have been involved in certain legal actions (and, if yes, the seller must provide a separate list of those actions); (4) whether the seller has a cancellation or refund policy (and, if yes, the seller must provide a separate document stating the material terms of such policies); and (5) a list of persons who have purchased the business opportunity within the previous three years. Misrepresentations and omissions are prohibited under the Rule, and for sales conducted in languages other than English, all disclosures must be provided in the language in which the sale is conducted.

Burden Estimates:

FTC staff estimates there are approximately 3,050 business opportunity sellers covered by the Rule, including vending machine, rack display, work-at-home, and other opportunity sellers. Of this total, staff estimates that on an annual basis approximately 90% are established sellers and the remaining 10% are new entrants (i.e., 2,745 existing business opportunity sellers plus 305 new entrants). In addition, staff estimates that approximately 92 business opportunity sellers market business opportunities in Spanish (in addition to English) and another 61 sellers market in languages other than English or Spanish (in addition to English).¹

A. Estimated Hours Burden

¹ FTC bases these estimates on census data. *See* American Community Survey, Household Language Table K201601 (2018), at <https://data.census.gov/cedsci/>. The census data indicates that approximately 3% of Spanish-speaking U.S. households are classified as limited English speaking households. In addition, the data indicates that approximately 2% of the United States population speaks a language other than Spanish or English at home and are classified as limited English speaking households. Staff estimates that approximately 3% of all entities selling business opportunities market in Spanish and 2% of all such entities market in languages other than English or Spanish.

Compliance burdens will vary depending on a business opportunity seller's prior experience with the Rule. Appendices A and B to the Rule provide models of the required disclosure documents in both English and Spanish, reducing the potential burden that sellers may incur to provide the required disclosures. Commission staff estimates that 2,745 existing business opportunity sellers will require approximately two hours to update their disclosure documents annually. This yields a total annual burden of 5,490 hours for established sellers. Staff also projects that 305 new business opportunity sellers will require approximately five hours to develop their initial disclosure documents. This yields a total annual burden of approximately 1,525 hours. In addition, staff estimates that all business opportunity sellers will require approximately one hour to file and store required records for a total of 3,050 hours. This yields a cumulative total of 10,065 hours.

B. Estimated Labor Cost

The Commission determines estimated labor costs by applying applicable wage rates to the burden hours discussed above. Commission staff assumes that an attorney likely would prepare or update required disclosure documents at an approximate hourly rate of \$69.86.² Accordingly, staff estimates that cumulative labor costs are \$703,141 (10,065 hours × \$69.86 per hour).

C. Estimated Non-Labor Costs

1. Printing and Mailing of the Disclosure Document

² This figure is derived from the mean hourly wage for Lawyers. See "Occupational Employment and Wages—May 2019," Bureau of Labor Statistics, U.S. Department of Labor (March 31, 2020), Table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2019"), available at <https://www.bls.gov/news.release/pdf/ocwage.pdf>.

Business opportunity sellers may also incur costs to print and distribute the single-page disclosure document, plus any attachments. These costs vary based upon the length of the attachments and the number of copies produced to meet the expected demand. Commission staff estimates that 3,050 business opportunity sellers will print and mail approximately 1,000 disclosure documents per year at a cost of \$1.00 per document, for a total cost of \$3,050,000. Conceivably, many business opportunity sellers will elect to furnish disclosures electronically; thus, the total cost could be much less.

2. Translating the Required Disclosures Into a Language Other Than English

The costs associated with translating the disclosures will vary depending upon a business opportunity seller's prior experience and the language the seller uses to market business opportunities. Because Appendices A and B to the Rule provide illustrations of the required disclosure documents in both English and Spanish, business opportunity sellers marketing in Spanish will not incur costs to translate their disclosure documents. Existing sellers who market business opportunities in either Spanish or another non-English language may incur translation costs to update their disclosures over time. New entrants that market business opportunities in languages other than English or Spanish will incur costs to translate Appendix A into other languages.

Informed by Census data, FTC staff estimates that 92 sellers market business opportunities in Spanish and an additional 61 sellers market in languages other than English or Spanish. This includes an estimated 9 new entrants annually that market business opportunities in Spanish and 6 new entrants that market business opportunities in languages other than English or Spanish.

FTC staff estimates that approximately 137 existing business opportunity sellers are marketing business opportunities in languages other than English. Staff estimates these sellers will require on average approximately 250 words (about one standard, double-spaced page) to update initial disclosures. Therefore, staff estimates the total cost to translate the updates to sellers' initial disclosures is approximately \$5,994 [137 sellers \times (17.5³ cents per word \times 250 words)].

In addition, staff estimates that new entrant business opportunity sellers marketing in languages other than English or Spanish will incur burden to translate the required disclosures. There are 485 words in Appendix A to the Rule. Therefore, staff estimates that the average annual cost burden for new business opportunity sellers to translate the required disclosures into a language other than English or Spanish will be approximately \$509 [6 sellers \times (17.5 cents per word \times 485 words)].

Thus, cumulative estimated non-labor costs are \$3,056,503 (\$3,050,000 + \$5,994 + \$509).

Request for Comment:

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing

³ Staff estimates that this represents the current market rate per word to translate the disclosure documents into the language the sellers use to market business opportunities.

clearance for the information collection requirements contained in the Business Opportunity Rule, 16 CFR Part 437 (OMB Control Number 3084-0142).

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Write "Business Opportunity Rule Paperwork Comment, FTC File No. P114408" on your comment. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it through the <https://www.regulations.gov> website by following the instructions on the web-based form provided. Your comment, including your name and your state – will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

If you file your comment on paper, write “Business Opportunity Rule Paperwork Comment, FTC File No. P114408” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2020-16301 Filed: 7/27/2020 8:45 am; Publication Date: 7/28/2020]